

and the permitting authority issues a CAIR opt-in permit providing for, allocation to the CAIR NO<sub>x</sub> Ozone Season opt-in unit of CAIR NO<sub>x</sub> Ozone Season allowances under § 97.388(c).

**§ 97.387 Change in regulatory status.**

(a) *Notification.* If a CAIR NO<sub>x</sub> Ozone Season opt-in unit becomes a CAIR NO<sub>x</sub> Ozone Season unit under § 97.304, then the CAIR designated representative shall notify in writing the permitting authority and the Administrator of such change in the CAIR NO<sub>x</sub> Ozone Season opt-in unit's regulatory status, within 30 days of such change.

(b) *Permitting authority's and Administrator's actions.* (1) If a CAIR NO<sub>x</sub> Ozone Season opt-in unit becomes a CAIR NO<sub>x</sub> Ozone Season unit under § 97.304, the permitting authority will revise the CAIR NO<sub>x</sub> Ozone Season opt-in unit's CAIR opt-in permit to meet the requirements of a CAIR permit under § 97.323, and remove the CAIR opt-in permit provisions, as of the date on which the CAIR NO<sub>x</sub> Ozone Season opt-in unit becomes a CAIR NO<sub>x</sub> Ozone Season unit under § 97.304.

(2)(i) The Administrator will deduct from the compliance account of the source that includes the CAIR NO<sub>x</sub> Ozone Season opt-in unit that becomes a CAIR NO<sub>x</sub> Ozone Season unit under § 97.304, CAIR NO<sub>x</sub> Ozone Season allowances equal in amount to and allocated for the same or a prior control period as:

(A) Any CAIR NO<sub>x</sub> Ozone Season allowances allocated to the CAIR NO<sub>x</sub> Ozone Season opt-in unit under § 97.388 for any control period after the date on which the CAIR NO<sub>x</sub> Ozone Season opt-in unit becomes a CAIR NO<sub>x</sub> Ozone Season unit under § 97.304; and

(B) If the date on which the CAIR NO<sub>x</sub> Ozone Season opt-in unit becomes a CAIR NO<sub>x</sub> Ozone Season unit under § 97.304 is not September 30, the CAIR NO<sub>x</sub> Ozone Season allowances allocated to the CAIR NO<sub>x</sub> Ozone Season opt-in unit under § 97.388 for the control period that includes the date on which the CAIR NO<sub>x</sub> Ozone Season opt-in unit becomes a CAIR NO<sub>x</sub> Ozone Season unit under § 97.304, multiplied by the ratio of the number of days, in the control period, starting with the date on which the CAIR NO<sub>x</sub> Ozone Season opt-

in unit becomes a CAIR NO<sub>x</sub> Ozone Season unit under § 97.304 divided by the total number of days in the control period and rounded to the nearest whole allowance as appropriate.

(ii) The CAIR designated representative shall ensure that the compliance account of the source that includes the CAIR NO<sub>x</sub> Ozone Season opt-in unit that becomes a CAIR NO<sub>x</sub> Ozone Season unit under § 97.304 contains the CAIR NO<sub>x</sub> Ozone Season allowances necessary for completion of the deduction under paragraph (b)(2)(i) of this section.

(3)(i) For every control period after the date on which the CAIR NO<sub>x</sub> Ozone Season opt-in unit becomes a CAIR NO<sub>x</sub> Ozone Season unit under § 97.304, the CAIR NO<sub>x</sub> Ozone Season opt-in unit will be allocated CAIR NO<sub>x</sub> Ozone Season allowances under § 97.342.

(ii) If the date on which the CAIR NO<sub>x</sub> Ozone Season opt-in unit becomes a CAIR NO<sub>x</sub> Ozone Season unit under § 97.304 is not September 30, the following amount of CAIR NO<sub>x</sub> Ozone Season allowances will be allocated to the CAIR NO<sub>x</sub> Ozone Season opt-in unit (as a CAIR NO<sub>x</sub> Ozone Season unit) under § 97.342 for the control period that includes the date on which the CAIR NO<sub>x</sub> Ozone Season opt-in unit becomes a CAIR NO<sub>x</sub> Ozone Season unit under § 97.304:

(A) The amount of CAIR NO<sub>x</sub> Ozone Season allowances otherwise allocated to the CAIR NO<sub>x</sub> Ozone Season opt-in unit (as a CAIR NO<sub>x</sub> Ozone Season unit) under § 97.342 for the control period multiplied by;

(B) The ratio of the number of days, in the control period, starting with the date on which the CAIR NO<sub>x</sub> Ozone Season opt-in unit becomes a CAIR NO<sub>x</sub> Ozone Season unit under § 97.304, divided by the total number of days in the control period; and

(C) Rounded to the nearest whole allowance as appropriate.

[65 FR 2727, Jan. 18, 2000, as amended at 71 FR 74795, Dec. 13, 2006]

**§ 97.388 CAIR NO<sub>x</sub> Ozone Season allowance allocations to CAIR NO<sub>x</sub> Ozone Season opt-in units.**

(a) *Timing requirements.* (1) When the CAIR opt-in permit is issued under § 97.384(e), the permitting authority

will allocate CAIR NO<sub>x</sub> Ozone Season allowances to the CAIR NO<sub>x</sub> Ozone Season opt-in unit, and submit to the Administrator the allocation for the control period in which a CAIR NO<sub>x</sub> Ozone Season opt-in unit enters the CAIR NO<sub>x</sub> Ozone Season Trading Program under § 97.384(g), in accordance with paragraph (b) or (c) of this section.

(2) By no later than July 31 of the control period after the control period in which a CAIR NO<sub>x</sub> Ozone Season opt-in unit enters the CAIR NO<sub>x</sub> Ozone Season Trading Program under § 97.384(g) and July 31 of each year thereafter, the permitting authority will allocate CAIR NO<sub>x</sub> Ozone Season allowances to the CAIR NO<sub>x</sub> Ozone Season opt-in unit, and submit to the Administrator the allocation for the control period that includes such submission deadline and in which the unit is a CAIR NO<sub>x</sub> Ozone Season opt-in unit, in accordance with paragraph (b) or (c) of this section.

(b) *Calculation of allocation.* For each control period for which a CAIR NO<sub>x</sub> Ozone Season opt-in unit is to be allocated CAIR NO<sub>x</sub> Ozone Season allowances, the permitting authority will allocate in accordance with the following procedures, if provided in a State implementation plan revision submitted in accordance with § 51.123(ee)(3)(i), (ii), or (iii) of this chapter and approved by the Administrator:

(1) The heat input (in mmBtu) used for calculating the CAIR NO<sub>x</sub> Ozone Season allowance allocation will be the lesser of:

(i) The CAIR NO<sub>x</sub> Ozone Season opt-in unit's baseline heat input determined under § 97.384(c); or

(ii) The CAIR NO<sub>x</sub> Ozone Season opt-in unit's heat input, as determined in accordance with subpart HHHH of this part, for the immediately prior control period, except when the allocation is being calculated for the control period in which the CAIR NO<sub>x</sub> Ozone Season opt-in unit enters the CAIR NO<sub>x</sub> Ozone Season Trading Program under § 97.384(g).

(2) The NO<sub>x</sub> emission rate (in lb/mmBtu) used for calculating CAIR NO<sub>x</sub> Ozone Season allowance allocations will be the lesser of:

(i) The CAIR NO<sub>x</sub> Ozone Season opt-in unit's baseline NO<sub>x</sub> emissions rate (in lb/mmBtu) determined under § 97.384(d) and multiplied by 70 percent; or

(ii) The most stringent State or Federal NO<sub>x</sub> emissions limitation applicable to the CAIR NO<sub>x</sub> Ozone Season opt-in unit at any time during the control period for which CAIR NO<sub>x</sub> Ozone Season allowances are to be allocated.

(3) The permitting authority will allocate CAIR NO<sub>x</sub> Ozone Season allowances to the CAIR NO<sub>x</sub> Ozone Season opt-in unit in an amount equaling the heat input under paragraph (b)(1) of this section, multiplied by the NO<sub>x</sub> emission rate under paragraph (b)(2) of this section, divided by 2,000 lb/ton, and rounded to the nearest whole allowance as appropriate.

(c) Notwithstanding paragraph (b) of this section and if the CAIR designated representative requests, and the permitting authority issues a CAIR opt-in permit (based on a demonstration of the intent to repower stated under § 97.383 (a)(5)) providing for, allocation to a CAIR NO<sub>x</sub> Ozone Season opt-in unit of CAIR NO<sub>x</sub> Ozone Season allowances under this paragraph (subject to the conditions in §§ 97.384(h) and 97.386(g)), the permitting authority will allocate to the CAIR NO<sub>x</sub> Ozone Season opt-in unit as follows, if provided in a State implementation plan revision submitted in accordance with § 51.123(ee)(3)(i), (ii), or (iii) of this chapter and approved by the Administrator:

(1) For each control period in 2009 through 2014 for which the CAIR NO<sub>x</sub> Ozone Season opt-in unit is to be allocated CAIR NO<sub>x</sub> Ozone Season allowances,

(i) The heat input (in mmBtu) used for calculating CAIR NO<sub>x</sub> Ozone Season allowance allocations will be determined as described in paragraph (b)(1) of this section.

(ii) The NO<sub>x</sub> emission rate (in lb/mmBtu) used for calculating CAIR NO<sub>x</sub> Ozone Season allowance allocations will be the lesser of:

(A) The CAIR NO<sub>x</sub> Ozone Season opt-in unit's baseline NO<sub>x</sub> emissions rate (in lb/mmBtu) determined under § 97.384(d); or

(B) The most stringent State or Federal NO<sub>x</sub> emissions limitation applicable to the CAIR NO<sub>x</sub> Ozone Season opt-in unit at any time during the control period in which the CAIR NO<sub>x</sub> Ozone Season opt-in unit enters the CAIR NO<sub>x</sub> Ozone Season Trading Program under § 97.384(g).

(iii) The permitting authority will allocate CAIR NO<sub>x</sub> Ozone Season allowances to the CAIR NO<sub>x</sub> Ozone Season opt-in unit in an amount equaling the heat input under paragraph (c)(1)(i) of this section, multiplied by the NO<sub>x</sub> emission rate under paragraph (c)(1)(ii) of this section, divided by 2,000 lb/ton, and rounded to the nearest whole allowance as appropriate.

(2) For each control period in 2015 and thereafter for which the CAIR NO<sub>x</sub> Ozone Season opt-in unit is to be allocated CAIR NO<sub>x</sub> Ozone Season allowances,

(i) The heat input (in mmBtu) used for calculating the CAIR NO<sub>x</sub> Ozone Season allowance allocations will be determined as described in paragraph (b)(1) of this section.

(ii) The NO<sub>x</sub> emission rate (in lb/mmBtu) used for calculating the CAIR NO<sub>x</sub> Ozone Season allowance allocation will be the lesser of:

(A) 0.15 lb/mmBtu;

(B) The CAIR NO<sub>x</sub> Ozone Season opt-in unit's baseline NO<sub>x</sub> emissions rate (in lb/mmBtu) determined under § 97.384(d); or

(C) The most stringent State or Federal NO<sub>x</sub> emissions limitation applicable to the CAIR NO<sub>x</sub> Ozone Season opt-in unit at any time during the control period for which CAIR NO<sub>x</sub> Ozone Season allowances are to be allocated.

(iii) The permitting authority will allocate CAIR NO<sub>x</sub> Ozone Season allowances to the CAIR NO<sub>x</sub> Ozone Season opt-in unit in an amount equaling the heat input under paragraph (c)(2)(i) of this section, multiplied by the NO<sub>x</sub> emission rate under paragraph (c)(2)(ii) of this section, divided by 2,000 lb/ton, and rounded to the nearest whole allowance as appropriate.

(d) *Recordation.* If provided in a State implementation plan revision submitted in accordance with § 51.123(ee)(3)(i), (ii), or (iii) of this chapter and approved by the Administrator:

(1) The Administrator will record, in the compliance account of the source that includes the CAIR NO<sub>x</sub> Ozone Season opt-in unit, the CAIR NO<sub>x</sub> Ozone Season allowances allocated by the permitting authority to the CAIR NO<sub>x</sub> Ozone Season opt-in unit under paragraph (a)(1) of this section.

(2) By September 1 of the control period in which a CAIR NO<sub>x</sub> Ozone Season opt-in unit enters the CAIR NO<sub>x</sub> Ozone Season Trading Program under § 97.384(g) and September 1 of each year thereafter, the Administrator will record, in the compliance account of the source that includes the CAIR NO<sub>x</sub> Ozone Season opt-in unit, the CAIR NO<sub>x</sub> Ozone Season allowances allocated by the permitting authority to the CAIR NO<sub>x</sub> Ozone Season opt-in unit under paragraph (a)(2) of this section.

#### APPENDIX A TO SUBPART IIII OF PART 97—STATES WITH APPROVED STATE IMPLEMENTATION PLAN REVISIONS CONCERNING CAIR NO<sub>x</sub> OZONE SEASON OPT-IN UNITS

1. The following States have State Implementation Plan revisions under § 51.123(ee)(3) of this chapter approved by the Administrator and establishing procedures providing for CAIR NO<sub>x</sub> Ozone Season opt-in units under subpart IIII of this part and allocation of CAIR NO<sub>x</sub> Ozone Season allowances to such units under § 97.388(b):

Indiana  
Michigan  
North Carolina  
Ohio  
South Carolina  
Tennessee

2. The following States have State Implementation Plan revisions under § 51.123(ee)(3) of this chapter approved by the Administrator and establishing procedures providing for CAIR NO<sub>x</sub> Ozone Season opt-in units under subpart IIII of this part and allocation of CAIR NO<sub>x</sub> Ozone Season allowances to such units under § 97.388(c):

Indiana  
Michigan  
North Carolina  
Ohio  
South Carolina  
Tennessee

[65 FR 2727, Jan. 18, 2000, as amended at 72 FR 46394, Aug. 20, 2007; 72 FR 56920, Oct. 5, 2007; 72 FR 57215, Oct. 9, 2007; 72 FR 59487, Oct. 22, 2007; 72 FR 72263, Dec. 20, 2007; 73 FR 6041, Feb. 1, 2008]